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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Maxine M. Chesney, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 18-00465 MMC
)	
UNITED MICROELECTRONICS)	
CORPORATION; FUJIAN JINHUA)	
INTEGRATED CIRCUIT, CO. LTD.;)	
CHEN ZHENGKUN also known as)	
STEPHEN CHEN; HE JIANTING also)	
known as J.T. HO; and WANG)	
YUNGMING also known as KENNY)	
WANG,)	
)	
Defendants.)	
)	

San Francisco, California
Wednesday, October 23, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

1 **APPEARANCES:** (CONTINUED)

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11 Palo Alto, California 94303

12 BY: **NEAL J. STEPHENS**

13 ATTORNEY AT LAW

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Wednesday - October 23, 2019

2:43 p.m.

P R O C E E D I N G S

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4 **THE CLERK:** Calling Criminal Case Number 18-465,
5 United States of America versus United Microelectronics and
6 Fujian Jinhau Integrated.

7 Will counsel please step forward and state your
8 appearances for the record.

9 **MR. HEMANN:** Good afternoon, Your Honor. John Hemann
10 for the United States.

THE COURT: Mr. Hemann.

12 MS. WONG: Good afternoon, Your Honor. Christine Wong
13 for Fujian Jinhau Integrated Circuit.

14 THE COURT: Thank you.

15 MS. CALDWELL: Your Honor, good afternoon. Leslie
16 Caldwell for United Microelectronics.

17 THE COURT: Very good.

MR. STEPHENS: And, Your Honor, I apologize.

19 THE COURT: I'm sorry.

20 **MR. STEPHENS:** Good afternoon. Good to see you. It's
21 Neal Stephens on behalf of nonparty and victim Micron.

22 **THE COURT:** I'm just going to add you on here for a
23 moment.

24 | (Pause in proceedings.)

THE COURT: All right. Ms. Geiger, I want to hand you

1 the file on Mr. Lott's case back just so I don't commingle
2 them.

3 All right. What we have here is a dispute over what would
4 be the proper conduct of a protective order in this case
5 regarding alleged trade secrets and how they can be observed,
6 copied, et cetera, by various participants in the proceedings.

7 I generally understand what the parties' respective
8 positions are in this matter so I'm not too sure where to
9 start.

10 I have a number of questions. I also tried to write down
11 a schedule of how long it takes to get from here to there and
12 wherever, and was going to confirm with counsel if those
13 various times are in accord with what they understand as travel
14 times because one of the concerns the defendant is raising is
15 "It's really hard for us to all get together if we all have to
16 be running around the globe."

17 There are questions about, then, whether that interest, of
18 course, outweighs whatever the Government and Micron's interest
19 is in protecting their trade secrets and whether there are any
20 alternatives, and so we'll just explore all this and see where
21 we come out.

22 Let me just put all this aside for a minute because I have
23 a lot of papers.

24 Okay. As it stands now, the Government and the defendants
25 are essentially in accord with all of the terms of a protective

1 order with one exception; and that exception is whether in
2 viewing and having access, I guess you would say, to the
3 proprietary information that's claimed here, that that material
4 can be viewed in Hong Kong as opposed to simply the U.S.A.,
5 Singapore, Tokyo, or Taiwan.

6 But the agreed-upon venues would be U.S.A., Singapore,
7 Tokyo, and Taiwan; correct? Everybody agrees? Yeah, I'm
8 getting nods from Mr. Hemann. Okay.

9 **MR. HEMANN:** Yes. Yes, Your Honor.

10 **THE COURT:** Okay. There's no demurrer to that.

11 Okay. So the question is whether Hong Kong should be put
12 in the mix or not. The Government has expressed their own
13 concerns and those of Micron, and then Micron has added some
14 further conditions that they would like to see on top of what
15 the Government and the defendants had agreed to with the
16 exception of the location which, of course, they don't want to
17 go to Hong Kong.

18 All right. Just one minute. I'm signing the surrender
19 order.

20 (Pause in proceedings.)

21 **THE COURT:** Then returning to the instant case, I just
22 want to make sure I've got everybody in the right place as far
23 as who's where.

24 Okay. It's my understanding that counsel for the
25 defendants, which would be Latham & Watkins and

1 Morrison & Foerster, both have offices in Hong Kong. That --
2 I'm sorry. Latham also has offices in Singapore and Tokyo.

3 And does MoFo or Morrison & Foerster also have offices in
4 Singapore and Tokyo?

5 **MS. WONG:** Yes, we do, Your Honor.

6 **THE COURT:** Okay. According to the defendants, the
7 defendant Jinhau, says they have crucial members of the Defense
8 teams in Hong Kong and war rooms in Hong Kong and majority of
9 the Defense teams are in Hong Kong.

10 I want to ask you about the plural in a minute.

11 And from Latham & Watkins' standpoint, they say one of
12 their lead attorneys is in Hong Kong.

13 So let me ask Ms. Caldwell. Where's the other one?

14 **MS. CALDWELL:** Here, standing in front of you.

15 **THE COURT:** Oh, that's you. Okay.

16 **MS. CALDWELL:** But we also have some colleagues in
17 Shanghai who are working on the matter.

18 **THE COURT:** Okay. And are there -- if I could then
19 ask counsel for Jinhau, when you were using the plurals in your
20 papers, are you talking about there are maybe firms other than
21 Morrison & Foerster that are part of the Defense team or have
22 war rooms in their own offices, or anything like that?

23 **MS. WONG:** I think when we were referring to the
24 plural, we meant both us and counsel for our co-defendant as
25 opposed to --

1 **THE COURT:** Oh, okay.

2 **MS. WONG:** -- Defense team for Jinhau.

3 **THE COURT:** Okay. All right. So essentially just
4 arguing about the two firms that are here.

5 **MS. WONG:** Correct.

6 **THE COURT:** Okay. Got it.

7 All right. The defendants themselves, Jinhau is located
8 in Fujian Province in China?

9 **MS. WONG:** That is correct.

10 **THE COURT:** Okay. And UMC is in Taiwan?

11 **MS. CALDWELL:** Correct.

12 **THE COURT:** Okay. So somebody's going to have to go
13 somewhere unless -- well, pretty much somebody has to go
14 somewhere. Everybody isn't starting in the same place; but I'd
15 like to ask the defendants -- I'll just start with Ms. Wong --
16 is there a reason that the Defense team is based in Hong Kong
17 as opposed to, let's say, here where you are?

18 **MS. WONG:** I would say the Defense team is based both
19 here where I am and important members of our team are in
20 Hong Kong as well, and they're located there mainly because we
21 have expertise there, its proximity to the client, it is a
22 reasonable place for us to be in order to best service our
23 client. And so in order for that team to be able to access the
24 discovery while having all their materials in front of them,
25 the ease of being in their own offices, that would require them

1 to be able to review the discovery in Hong Kong.

2 **THE COURT:** Okay. Ms. Caldwell, it's pretty much the
3 same question.

4 **MS. CALDWELL:** Pretty much the same thing. I would
5 say that our client is in Taiwan, and it's much easier for my
6 partner in Hong Kong to travel a one-hour flight to Taiwan than
7 it is for me to take a 13-hour flight to Taiwan. So she also
8 has relevant experience. She's a very experienced white-collar
9 lawyer who's done trade secrets matters before.

10 **THE COURT:** Now, we're not really talking about people
11 being able to meet with the client just in general but actually
12 looking at the stuff, whatever it is. I'm not sure I
13 understand what it is. I may ask somebody over here on the
14 other side to explain it a little more. But are they going to
15 have to get together with the client a lot to look at this
16 stuff whatever it is?

17 **MS. WONG:** I think that is certainly a possibility and
18 something that we are trying to prepare for to make sure that
19 we are in a position that if we do need to meet with our
20 client -- and, of course, it would be under the circumstances
21 that are set forth in the protective order for the client reps
22 to actually review the evidence in question -- that they are in
23 a place where it is convenient to both our Defense counsel in
24 Hong Kong and the client to meet, which, as Ms. Caldwell says,
25 is far simpler for the client to travel to Hong Kong than the

1 other options.

2 **THE COURT:** This wasn't clear that you were going to
3 have to get together with the material and the client all that
4 frequently. In other words, there's an allegation they already
5 know what it is so I don't know if there's any extra stuff.
6 Apparently nobody is objecting that a couple of employees from
7 both of the companies can look at this material.

8 Now, there are all kinds of concerns about whether members
9 of the bar can look at it and whatever, and the alleged thieves
10 are essentially being allowed to look at it. They have to be
11 vetted I guess in some way. So that kind of caught my
12 attention because everybody was so worried about other people
13 and yet the parties themselves were at least given some access.

14 Okay. I want to go just back for a minute to Micron's
15 additional restrictions that they would propose. One was they
16 didn't want the experts to copy anything. Right now the
17 attorneys that are designated can make copies, but where are
18 the experts located? Are they over there? Are they here?
19 Where are these people?

20 **MS. CALDWELL:** So UMC has not yet retained experts --

21 **THE COURT:** Okay.

22 **MS. CALDWELL:** -- but we anticipate that if this case
23 goes to the next stages, we will do that, and I don't know
24 where they would be at this point.

25 **THE COURT:** What about from the Jinhau's standpoint?

1 **MS. WONG:** Same for Jinhau.

2 **THE COURT:** So if they couldn't have their own copies
3 in hand, so to speak, then what would they do? Have to come to
4 your offices to look at it? Is that the idea?

5 **MS. CALDWELL:** Presumably.

6 I should note too, Your Honor, that there is a civil case,
7 as you're aware because it's pending before Your Honor, in
8 which the protective order does not contain restrictions of
9 copying by experts.

10 **THE COURT:** So they're going to get to do it one way
11 or the other at some point.

12 **MS. CALDWELL:** Well, we're not party to that
13 protective order so we don't have the same access that the
14 civil parties do.

15 **THE COURT:** I see. I understand.

16 Okay. Well, are there going to be different experts in
17 the two cases?

18 **MS. CALDWELL:** I think they may well be, Your Honor.

19 **THE COURT:** Really? Okay.

20 All right. We don't know how hard it would be, like,
21 the experts to come to somebody's office because we don't know
22 where they're going to be and what have you.

23 Okay. Then the other question -- I mean, it would be
24 harder if they had to run around and look at things somewhere
25 other than their own, I guess, offices but, okay.

1 Then there's a distinction between, quote/unquote, "other
2 Defense counsel" and "Defense counsel," "other Defense counsel"
3 being -- well, let's start with "Defense counsel." Are
4 "Defense counsel" intended to mean not just everybody at Latham
5 or Morrison & Foerster, but the attorneys who are appearing as
6 a matter of record in this case, or just anybody at either of
7 those firms?

8 **MS. WONG:** I had actually thought it to mean anybody
9 at these firms, but perhaps that's --

10 **THE COURT:** I don't want to end up with, like,
11 fighting over what --

12 **MS. WONG:** The specific members of the Defense team of
13 Morrison & Foerster and Latham & Watkins?

14 **THE COURT:** Well, what the agreement means once we get
15 whatever we get on file.

16 **MS. CALDWELL:** I assume that it meant lawyers from
17 other firms, but I --

18 **THE COURT:** Well, no. That's the other Defense
19 lawyers.

20 **MS. CALDWELL:** Oh, I'm sorry.

21 **THE COURT:** I just want to first go to Defense counsel
22 because we're distinguishing "Defense counsel" and "other
23 Defense counsel," if "Defense counsel" means Latham,
24 Morrison & Foerster and "others" means other firms.

25 Okay. And then I don't know whether you want to take

1 this, Mr. Hemann or Mr. Stephens, explain why he's worried
2 about "other Defense counsel."

3 My question is: Why is it so worrisome given that under
4 the agreement they all have to be checked out and approved
5 first by the Government before they're allowed to see anything?

6 **MR. HEMANN:** I'll let Mr. Stephens --

7 **THE COURT:** Okay.

8 **MR. STEPHENS:** Sure.

9 Your Honor, we were just trying to clarify. It's our
10 understanding that, at least as to Jinhau, they know who some
11 of these people are. They haven't been identified to us yet so
12 if they know who some of them are now, identify them, we can
13 vet them now, and see if we can work it out.

14 **THE COURT:** All right. You just want to get some of
15 this out of the way upfront rather than sort of have it
16 straggling in in some fashion.

17 **MR. STEPHENS:** And then they'll also be put in a
18 position where it's assumed downstream that we had agreed to
19 anything because we don't know who they are, we don't know what
20 firm they're with, we don't know where they are, we don't know
21 where they sit.

22 **THE COURT:** Well, I don't think anybody has yet,
23 assuming anybody's agreed to, because there has to be an
24 official stamp of approval. I don't know if you trust
25 Mr. Hemann, but he's the one who's holding the stamp.

1 And so -- okay. I mean, I understand what you're saying.
2 It does seem like they built in a protection. It isn't like
3 they just hand this stuff out to anybody who's walking around,
4 you know, with a bar card.

5 Okay.

6 **MR. STEPHENS:** And, Your Honor, just to clarify.

7 **THE COURT:** Sure.

8 **MR. STEPHENS:** On the expert copying --

9 **THE COURT:** Yeah. Let's go back to that.

10 **MR. STEPHENS:** -- it's the fact that the experts can't
11 burn copies of what they receive from trial counsel. It was
12 just to narrow it so the folks who could make a copy for their
13 teams would be the trial lawyers here that are in front of you.
14 So there's not additional copies of this stuff lying around
15 that the experts have made.

16 **THE COURT:** Okay. So what you're saying is that what
17 you don't object to is, let's say, Ms. Wong or Ms. Caldwell
18 making a copy and then we've got expert X or Y and they hand it
19 to them, but what they shouldn't be able to do is then make
20 another copy.

21 **MR. STEPHENS:** Or any other copies, that's correct,
22 Your Honor, and that's assuming that the expert --

23 **THE COURT:** Oh, I see.

24 **MR. STEPHENS:** -- is approved through the protective
25 order process that you've just laid out.

1 **THE COURT:** Okay. They can have copies. They can
2 work on them at their offices. What they can't do is sort of
3 make more and distribute them is what you're afraid of.

4 **MR. STEPHENS:** They could have a copy and they could
5 review it in one of the accepted geographies.

6 **THE COURT:** Okay. Did you understand that that was --
7 I think I misunderstood. Did you understand it as it's just
8 been explained, Ms. Wong?

9 **MS. WONG:** That is not how I understood it.

10 **THE COURT:** Okay. What about yourself?

11 **MS. CALDWELL:** Likewise, Your Honor. I interpreted it
12 as they were not allowed to take copies --

13 **THE COURT:** Period.

14 **MS. CALDWELL:** -- and review them in their own
15 offices.

16 **THE COURT:** Yeah. In other words, "You can't have
17 one. You know, come here and look at ours but you can't have
18 it."

19 Well, that might be a little bit less onerous. I can kind
20 of see how Micron would like to have some idea about who's in a
21 position to distribute, if you will.

22 Okay. By the way, do you have -- either one of you can
23 take this question. Do you know who some of these other
24 Defense counsel are at this point?

25 **MS. WONG:** Frankly, I think that issue applies only to

1 Jinhau.

2 **THE COURT:** Okay. Do you happen to know?

3 **MS. WONG:** We do know who they are, and the reason why
4 we were pushing forward to have this protective order taken
5 care of now was we didn't want it to be held up -- the
6 production overall to be held up by this one issue of approving
7 the other Defense counsel.

8 **THE COURT:** See, I don't know if it would hold it up.
9 In other words, let's say that in an effort -- if I wanted to
10 say, "Okay, Defense counsel can see things if they're
11 approved."

12 Okay. And to somewhat reassure Micron in that regard,
13 because we don't want to get down the road and say, "No Defense
14 counsel can ever look at this necessarily," if you could let
15 Mr. Stephens know, you can do it on the record, I mean, you can
16 let him know in advance so that it's still whether -- it can't
17 hold it up. All it can do is hold up those people, but the
18 agreement can go forward either way with whatever orders I make
19 in connection with it. He'd just like to have a little bit of
20 an idea who are you thinking about. He would feel better about
21 it.

22 So if you know, I don't know if you can say it now or if
23 you've got it back at your office, but let me ask you that
24 first.

25 **MS. WONG:** Unfortunately, I don't have the names right

1 here with me. I'm happy to provide those names after this
2 appearance.

3 **THE COURT:** Okay.

4 **MS. WONG:** I can tell counsel and the Court that these
5 are all members of a U.S. State Bar and they are all members --
6 or practice with King, Wood & Mallesons, which is an
7 established firm -- established global law firm.

8 **THE COURT:** All right. And I think also don't they
9 have to sign the protective order or agree to be covered by it?

10 **MS. WONG:** They have to sign a -- there is a form at
11 the end --

12 **THE COURT:** Right.

13 **MS. WONG:** -- stating that they have to agree to it.

14 **THE COURT:** Right. So it's not like someone, if they
15 did do something that was in violation of the order, even
16 though it looked upfront like they were going to be okay and
17 they were approved and, heaven forbid, they did something
18 someone didn't like, it isn't like they would not be subject to
19 whatever contempt powers the Court has under the agreement.

20 Okay.

21 **MS. WONG:** And I might add also that we narrowed that
22 list to U.S.-admitted lawyers --

23 **THE COURT:** Okay.

24 **MS. WONG:** -- to be sure that they were subject to
25 some jurisdiction of the courts in the U.S.

1 **THE COURT:** Okay. Very good.

2 Okay. So -- all right. I actually had two separate
3 pages -- not pages -- pads where I wrote things. First I wrote
4 them all scribbly, and then I thought maybe before I come here
5 I ought to neaten it up, but I actually kind of like the
6 scribbly format so I've got them both here. I just want to
7 make sure I don't leave anything out in some of the preliminary
8 questions that I wanted to ask.

9 So are any of the -- is there any firm that's going to be
10 working on the case that has offices, for example, other than
11 yourselves, in, like, Tokyo or Singapore?

12 Nobody appears to be at the moment in Taiwan of the two
13 firms here, but I'll ask you about Taiwan in a minute. Are
14 there other -- or do any of these other law offices who may be
15 working on the case also have offices in Singapore, Tokyo? If
16 you know.

17 **MS. WONG:** Do you mean the other Defense counsel that
18 I was just referring to?

19 **THE COURT:** Yes. Whoever they may be, yes.

20 **MS. WONG:** Like King, Wood & Mallesons firm? I
21 actually don't know where their other offices are.

22 **THE COURT:** Anybody else in Taiwan? See, neither of
23 these firms -- nobody is in Taiwan actually except UMC.
24 Neither of the law firms have an office there.

25 Okay. Given where you have things kind of organized at

1 the moment, would it be difficult to set up kind of a whole
2 operation other than in Hong Kong?

3 **MS. WONG:** Yes, and I would say yes because it would
4 require those individuals on the team now in Hong Kong to
5 travel to another city to set up their files, their notes, the
6 information that they rely on in this other city and have to
7 travel there in order to review the evidence in totality with
8 the other information that they have.

9 **THE COURT:** I'm assuming you're going to say the same
10 thing, Ms. Caldwell?

11 **MS. CALDWELL:** Yes. I think, in addition, it would
12 require lawyers who are very busy, and not only on this matter
13 but on other matters, to interrupt their work and go to either
14 Singapore or Tokyo taking a four-hour international flight,
15 going through customs, et cetera, to review the materials in
16 this case.

17 **THE COURT:** Okay. I tried to figure out about how
18 long it would take to get from place to place. Here's a map
19 also that I printed out so I could just get a good feel for
20 where all these locations are.

21 Okay. Latham & Watkins said that for counsel who are in
22 Hong Kong to get to Singapore or Tokyo, it's about four hours
23 either way.

24 **MS. CALDWELL:** That's my understanding, Your Honor.

25 **THE COURT:** Okay. I, then, sort of trying to check

1 this out in some kind of judicial noticeable way -- and I'm
2 going to ask you about it to confirm this one way or another --
3 to get, for example, from Fujian -- they're in Jinjang; is that
4 where they are? Is that how you pronounce it?

5 **MS. WONG:** That's right.

6 **THE COURT:** Okay.

7 -- to Tokyo looks like maybe a little less than four hours
8 and a little more to get to Singapore. Does that sound about
9 right?

10 **MS. WONG:** That sounds about right.

11 **THE COURT:** And then for UMC, who's in Taiwan, to get
12 to Tokyo, it was a little less, maybe three hours but then it
13 looked like four to Singapore.

14 **MS. CALDWELL:** And I don't think UMC, candidly,
15 Your Honor, would have to travel to either of those
16 jurisdictions because when we need to meet with our client, we
17 can travel to Taiwan from Hong Kong, but it's really for the
18 convenience of the legal team that's working on the materials
19 and needs access to the documents.

20 **THE COURT:** Okay. All right.

21 If we look primarily at the legal teams that are in
22 Hong Kong, it only takes -- well, if your clients are coming to
23 you, if that were the case, then it only takes the clients
24 about an hour, I think, or less to get to Hong Kong --

25 **MS. CALDWELL:** Correct.

1 **THE COURT:** -- from where they are.

2 If you were going to the clients, it would take around an
3 hour to get to Taiwan, and UMC it wouldn't take any time
4 because they're already there, and it would take around, you
5 know, an hour for Jinhau, I guess.

6 Based on my map, Taiwan and -- well, Hong Kong and
7 Fujian Province, Taipei, they're all fairly close. When you
8 start getting to Tokyo, you start getting much farther away.
9 Singapore likewise just going in a different direction. And
10 U.S.A. of course, very far away, although there are very able
11 lawyers here.

12 So all right. Now, I can see the difficulties, to a
13 certain extent, presented. I mean, everybody doesn't have to
14 start out in Hong Kong, but apparently you're established
15 there, you have good size offices there, and it fit to put this
16 case in Hong Kong. It isn't like -- from what I gather, it
17 isn't like you got the case and then set everything up in
18 Hong Kong, but I could be wrong about that.

19 **MS. CALDWELL:** Your Honor, one of the main reasons why
20 we've been using our Hong Kong resources is because our
21 Hong Kong partner has some technical expertise and she has been
22 the one who's been designated to be the point person on the
23 very technical issues. So she's the one who's traveled to
24 Taiwan quite frequently to interview engineers and other people
25 and is very steeped in that information, and that's, of course,

1 what the trade secrets would be relevant to.

2 **THE COURT:** Okay.

3 All right. So if the firms had to go to Taiwan to turn
4 material over, let's say, and have a client look at it and
5 have -- they can't go to Mainland China. So if they can't go
6 to Hong Kong, then it looks like Taiwan is the closest, but the
7 trouble is they don't have any offices there. So even though
8 UMC is there and even if they maybe have conference rooms or
9 something, Jinhau doesn't even have anybody there. I don't
10 know. You'd have to go rent space or something so that --

11 Taiwan is as close as Hong Kong for people to get to it
12 but it's not set up as well. That's kind of what I finally
13 figured out. I hadn't been that familiar with that part of the
14 world and just was trying to get the relationship.

15 **MS. CALDWELL:** Your Honor, just one other thing on
16 Taiwan. While UMC does have an office in Taipei, most of its
17 facilities are much further south in Taiwan, and it takes --

18 **THE COURT:** Oh, really?

19 **MS. CALDWELL:** Yeah. So it takes a little while to
20 get there.

21 **THE COURT:** So it's a little farther away?

22 **MS. CALDWELL:** Yes.

23 **THE COURT:** No airport to that one or is there one?

24 **MS. CALDWELL:** There's -- from -- I don't actually
25 know the answer to that one, if you can fly from Hong Kong to

1 southern Taiwan.

2 **THE COURT:** Okay.

3 **MR. HEMANN:** It's a very pleasant 90-minute bullet
4 train ride from the airport.

5 **MS. CALDWELL:** From the Taipei Airport.

6 **MR. HEMANN:** From the Taipei Airport.

7 **THE COURT:** Okay. You did that, Mr. Hemann?

8 **MR. HEMANN:** Masa Maos (phonetic), yes.

9 **THE COURT:** You did that, Mr. Hemann? Okay.

10 **MR. HEMANN:** I've gotten close.

11 **THE COURT:** I didn't ask how hard it is for you to get
12 anywhere --

13 **MR. HEMANN:** Nobody cares.

14 **THE COURT:** -- and you didn't have to meet with the
15 clients.

16 All right. So it seemed to me that as far as convenience
17 goes, that Singapore and Tokyo really aren't convenient for
18 anyone. The U.S. could be but not necessarily for the client.

19 There are three people, I guess, that would have to go
20 to -- or, you know, three groups of people that would have to
21 go to Taiwan, only two, the clients would have to go to
22 Hong Kong or vice versa, so, okay, if you're going to go where
23 they are.

24 So, in fact, Hong Kong is probably the most convenient
25 place for the defendants to try to marshal whatever defense

1 they're going to have to these charges.

2 So we should then turn to, at this point, the Government
3 and Micron to see if one can say, nevertheless, the risks are
4 significant enough that it's just not appropriate to have this
5 material available there.

6 I'm not sure where you want to start. I do want to say
7 that I didn't think the words "may be necessary" in the statute
8 were really dispositive. I thought that was more a turn of
9 phrase, so to speak, not really the difference between the
10 Court finding something is necessary and, gee, there's a slight
11 possibility it might be. I think it's just a way of talking in
12 statutory language; but if you had anything more to say on
13 that, that would be fine.

14 **MR. HEMANN:** Well, nevertheless, it is the statutory
15 language --

16 **THE COURT:** Yes, I know.

17 **MR. HEMANN:** -- and the natural reading of it is as it
18 says. I don't think there's an alternative reading other than
19 treating the word "may" out of the statute and replacing it
20 with "shall." And clearly the purpose behind this particular
21 statute is to provide broadly prophylactic protection in this
22 circumstance.

23 And, you know, there's no way to debate. This is a very
24 close question as exemplified by the fact that it is the one
25 part of this that we could not come to an agreement on. It is

1 a close question. It comes down to protection versus
2 convenience, and I'm not belittling the notion of convenience
3 as I say that, but that's what the issue is.

4 There's no doubt in this case, although the Defense do not
5 need to and are not right now admitting it, the trade secrets
6 at issue and the information at issue in this case was stolen
7 from Micron. It's not what -- this case is not going to be
8 about whether or not information was stolen from Micron. It
9 indisputably was. It will be about whether that information is
10 a trade secret, which under the statute the Court must presume
11 that it was at this point in the discussions.

12 So what we have is trade secrets presumptively,
13 indisputably stolen, and then the question is risk versus
14 convenience; and it comes down to, then -- we sort of circle
15 back to where this is. If it's not "may" in a hypothetically
16 possible, if that's not what "may" means, but it must mean
17 something short of "shall," where does the risk come in?

18 And, you know, there's also little risk given the
19 authorities that are cited by the parties in the briefs that
20 security professionals find Hong Kong to be at least somewhat
21 risky, and I think that the evidence points to the fact that it
22 is increasingly risky given recent events.

23 If at some point in the past before the PRC government
24 began to take the active interest in Hong Kong that it is
25 currently showing, it wasn't dangerous for information. Many

1 knowledgeable security professionals find it to be dangerous
2 from the perspective of intellectual property theft now for the
3 same reason that Mainland China is dangerous from the
4 perspective of intellectual property theft.

5 So as we -- you know, if we begin from the point that this
6 is a close question, in the situation where there's a close
7 question under 1835, our view is that the close question should
8 be resolved in favor of making sure that the victim's trade
9 secret intellectual property rights are protected.

10 So once we get to close question, our view is that amongst
11 the reasonable compromises we've made, on this particular issue
12 being a close question, the Court should fall on the side of
13 protecting the victim's intellectual property rights.

14 And I think that that's really the essence of what the
15 Government's position is here now. It's not this is easy or
16 this is clear. It's protecting the victim versus legitimate
17 arguments with regard to -- you know, legitimate arguments
18 about protecting the victim versus legitimate arguments about
19 the convenience of the lawyers. In this case, under 1835 the
20 way it is written, you've got to protect the victim. That's
21 our view.

22 **THE COURT:** Okay. I'm not sure, just getting back to
23 the "may" and "shall," I don't know that "shall" fits in there.
24 If you were going to substitute a word, you could say instead
25 of "may be," "is." All right? But then that just means the

1 Court has to decide it is necessary or and the Court may find
2 necessary, you know.

3 So it sounds to me sort of the same, but I understand the
4 main point that you're making, which is that the first question
5 is protection. All right. If -- and we're not dealing with --
6 and just to point out kind of along with what you're saying,
7 though, we aren't dealing with not giving the information to
8 the defendant. There are times that one can say "Gee, we can't
9 really defend against this case. You won't give us" fill in
10 the blank.

11 Here the Defense will have the information so it's really
12 a question of how much and what I'm calling inconvenience, but
13 it can rise to the level of difficulty in defending and then
14 you get into some problems.

15 And so I don't -- you know, we don't want to set up
16 barriers to people that make it so hard for them to be able to
17 actually effectively represent their client, but the first
18 point is, perhaps, do we need this protection; and then we'll
19 look and see if you do, is there any really strong argument as
20 to why, nevertheless, it shouldn't be afforded.

21 Okay. So the defendants will get the information. It may
22 be harder for them to work with it and use it if they can't get
23 everything together in Hong Kong. There's -- this is kind of
24 interesting.

25 Well, the defendants have pointed out, by the way, that

1 there are all kinds of companies that are doing business in
2 Hong Kong and Mainland China and they've got secrets all over
3 the place.

4 And my understanding from the Government was, well, those
5 are secrets different than our secrets; but the point is that
6 people trust secrets to be worked with in those two locations.
7 I don't think it matters whether it's process technology or
8 design or whatever some of these other words are that were used
9 to describe different aspects of how you finally get something
10 to market.

11 I mean, I think the idea was lots of people have secret
12 information and yet they're working in these locations. Now,
13 maybe they're taking a risk.

14 **MR. HEMANN:** But they're also making their own
15 decision.

16 **THE COURT:** No, no. I understand.

17 **MR. HEMANN:** The owner of the information --

18 **THE COURT:** Yes.

19 **MR. HEMANN:** -- is making a decision --

20 **THE COURT:** Yes. Just a minute.

21 **MR. HEMANN:** -- to bring the information over.

22 **THE COURT:** Don't interrupt for a minute.

23 **MR. HEMANN:** Oh, I'm sorry.

24 **THE COURT:** I understand what you're saying, but --
25 okay. They are taking the risk upon themselves, but an awful

1 lot of people have found that it's okay to do it.

2 Now, they're making a profit along with the risk. Micron
3 is not getting anything out of it. I understand that.

4 Okay. But at least there's some suggestion these people
5 aren't all nuts who are risking losing all of their valuable
6 information in these places.

7 Okay. The other --

8 **MR. HEMANN:** Can I add one -- Sorry.

9 **THE COURT:** Not yet.

10 **MR. HEMANN:** Okay.

11 **THE COURT:** Okay. The other point that the defendants
12 have raised is that the information that the Government has
13 provided by way of articles or writings about the risks in
14 China have been pretty clearly focusing on Mainland China but
15 they really aren't talking about Hong Kong if you read the
16 commentary in context. It sounds like they're talking about
17 Mainland China.

18 And although you're arguing that, yeah, Mainland China is
19 getting into this more and more and is having a greater
20 influence or intruding more into Hong Kong either politics or
21 what have you, there wasn't a lot of support for that in the
22 record that I have. They may be.

23 I'll tell you, they're everywhere. Okay? I mean, I have
24 another case that I got where there's a question about a
25 security breach amongst a whole bunch of major hotel chains

1 that have a reservation system, and the thought is Mainland
2 China has somehow hacked into it here in the U.S. So it
3 doesn't look like it can be super-protected no matter where you
4 are.

5 The main -- one thing I do want to say is that the thefts
6 that are alleged here are not high tech. The material may be
7 but the means is the plain old traditional, pick it up and move
8 it out.

9 The allegation is that people who worked for Micron took
10 with them what they had access to and converted it to their own
11 use and that of the defendants. It isn't like they hacked into
12 something, as far as I understand it, that was being protected.
13 They were trusted employees. I'm sure there's a concern that
14 that trust was violated and people would feel strongly about
15 that, but it's old-fashioned theft. It's not new-tech theft.

16 Okay. You wanted to add something, though. I don't want
17 you to forget it.

18 **MR. HEMANN:** Well, I guess the one -- it is a
19 follow-on to the point that, yes, some companies -- many
20 companies and law firms allow some of or all of or a portion of
21 their secrets to go into Hong Kong, but they make that decision
22 and they make the cuts where they choose to make them based on
23 the risks and benefits.

24 The largest employer in the United States does not allow
25 me to bring my cell phone into Hong Kong because of the risk

1 that the cell phone will be compromised so that is -- I mean,
2 that's a fact and it's a judgment, and does allow me to bring
3 my cell phone into other countries because that decision has
4 been made.

5 Now, is that dispositive? No. But it certainly does,
6 again, say that different employers make the cut at different
7 places. And here -- you know, I also think, and Mr. Stephens
8 can elaborate on this much more than I can, you know, Micron
9 has a fraught relationship with the government of China at this
10 point in time arising out of the circumstances of this case and
11 the theft involved in this case.

12 And there's been all manner of litigation, and so that the
13 profile of Micron and these secrets in China and the interest
14 in it by the Chinese government is not the same as it was when
15 a couple of employees uploaded from their Micron computers
16 these trade secrets and moved them around as they did.

17 So the ground has shifted a little bit, and I don't think
18 that just because that is the way it happened, that is
19 necessarily what the interest would be on this day.

20 But, again, you know, nobody's suggesting that the Court
21 can or should make a finding that intellectual property
22 definitely will be stolen if it is brought into Hong Kong. We
23 don't know that that will happen. We suspect that it could
24 happen, and that's what the position is.

25 **THE COURT:** Why don't we hear from Mr. Stephens on

1 the -- maybe if he wants to elaborate on what this increasing
2 animosity is of some sort between Micron and the Chinese
3 government.

4 **MR. STEPHENS:** I think that what Mr. Hemann is
5 referring to is just events that have happened since the case
6 has broken. There is civil litigation here in the
7 United States. There's civil and I understand regulatory
8 actions in China. There's this case.

9 And, Your Honor, you're sitting on trade secrets that are
10 worth billions of dollars; right? There's a lot on the line
11 for the victim that stands in front of you here today.

12 And I would like to actually go back to the statute real
13 quick to make sure that the use of "shall" in the statute is
14 that the Court "shall enter a protective order." And it's
15 "shall enter a protective order" to protect the victim's trade
16 secrets in a matter just like this. Then it is whether it may
17 be necessary. What we're arguing is that it may be necessary
18 to keep this out of Hong Kong to protect those trade secrets.

19 **THE COURT:** Okay. Good point.

20 **MR. STEPHENS:** And the other --

21 **THE COURT:** Basically the Court is required to protect
22 your secrets and right now we have a starting point for doing
23 that. In other words, there's a protective order that the
24 defendants say is not quite -- it goes beyond what's necessary,
25 and the Government and Micron are arguing, no, that's

1 necessary.

2 And so that's what I'm -- you know, that's what I'm trying
3 to deal with. I have to issue orders. I am required to
4 protect the secrets and not gamble with your client's secrets.
5 No, I understand that.

6 So, okay. By the way, what about the recent riots in
7 Hong Kong? What effect does any of that have here? It's in
8 the paper every day.

9 **MS. WONG:** Your Honor, it's in the paper every day but
10 besides some vague statement that this somehow affects security
11 in Hong Kong, there's no specific reason why it would affect
12 the trade secrets in this case.

13 And when counsel argues that the Court shall enter a
14 protective order, certainly no one here is arguing no
15 protective order is required at all; but, rather, we need to
16 look at what are the trade secrets that are being protected and
17 from what. And your question just now about the riots goes to
18 the second point, from what are we protecting the trade
19 secrets.

20 And the Government -- you know, we disagree about the
21 exact legal standard, but the Government's reply stated that
22 they must demonstrate a reasonable risk to trade secret
23 information. And even under that standard, they talk about
24 recent events in Hong Kong, it affects security in Hong Kong,
25 the PRC security and Intelligence Services that are active in

1 Hong Kong; but they go on to say in those same papers, and as
2 Your Honor has recognized, those same services are active all
3 over the world.

4 So, in other words, the argument both fails to make any
5 specific nonspeculative demonstration of the threat in
6 Hong Kong and also proves too much about the existence of these
7 services.

8 Now, going back to my first point about that we need to
9 actually look at what the actual trade secrets are, as
10 Your Honor recalls from the Indictment, we're talking about
11 trade secrets from alleged conduct in 2015 and 2016, which even
12 at that time were well on their way into receding and to
13 pass -- into the past product life cycle.

14 So for the Government's argument to succeed about how
15 interested the Chinese government is and the changing landscape
16 given the relations between Micron and the Chinese government,
17 it would suggest that the Chinese government is keenly
18 interested in these particular trade secrets.

19 And I would argue that these trade secrets are, in fact,
20 so old and were able to be obtained through, as Your Honor has
21 stated, the old-fashioned theft way, that there's no need for
22 the sort of cyber theft, high-tech theft that we are trying to
23 ward against through preventing these trade secrets from being
24 in Hong Kong.

25 And, in fact, the very terms of the protective order,

1 which are not light, already protect the trade secrets, the
2 alleged trade secrets, sufficiently.

3 **THE COURT:** Let me ask a question just in terms of the
4 vehicle this is being brought to my attention by.

5 All right. So I have a motion for protective order, which
6 is asking me to order that the agreement, to the extent that
7 it's approved by the Government and the defendants, be the
8 protective order. Micron is asking that I add some further
9 protections and then joins otherwise in the Government's
10 motion.

11 The defendants are asking that I find that Hong Kong be
12 added as an appropriate venue for -- what would you fill in the
13 blank with at that point?

14 **MS. CALDWELL:** For our attorneys, the people who are
15 on our team, to be able to review whatever these trade secrets
16 are in their offices in Hong Kong.

17 **THE COURT:** In Hong Kong.

18 **MS. WONG:** So in the same provision in the protective
19 order that states that the discovery can be produced in
20 Japan --

21 **THE COURT:** Okay.

22 **MS. WONG:** -- we would add Hong Kong.

23 **THE COURT:** And then there's -- of course, there's a
24 reply responding to the arguments made by the defendants.

25 If I were to rule and essentially grant the motion, then I

1 would -- I'm saying this will be your protective order; and if
2 I deny the motion and essentially say it's going to be your
3 protective order plus the other location, Hong Kong, to be
4 treated in the same way as Taiwan, Singapore, and Tokyo and the
5 U.S., and then I would have to add also whatever I'm going to
6 add about Micron; right? But I guess you're asking me to make
7 an order as to what your protective order should read as.

8 **MR. HEMANN:** Yeah. I mean it's just --

9 **THE COURT:** Okay.

10 **MR. HEMANN:** I think like we would do -- like we
11 frequently do with proposed orders of all sorts, we submit a
12 proposed order and the Court -- I think we're inviting the
13 Court to grant the order as modified if the Court feels a
14 modification is appropriate.

15 **THE COURT:** Okay. But you're asking to not modify.

16 **MR. HEMANN:** Well, yeah. We're asking --

17 **THE COURT:** Micron is asking for a modification going
18 more strict and the defendants are asking for a modification to
19 be more lenient essentially in terms of what can be produced or
20 observed and where.

21 **MR. HEMANN:** But we all want a protective order so
22 that we can move on with our situations --

23 **THE COURT:** Yes.

24 **MR. HEMANN:** -- one way or the other.

25 **THE COURT:** All right.

1 **MS. WONG:** And, Your Honor, we're happy to present a
2 proposed draft with our additions of Hong Kong if Your Honor
3 were to rule that Hong Kong should be added.

4 **THE COURT:** All right. Or if I were to add any of the
5 conditions that Mr. Stephens' client is asking for too.

6 **MR. STEPHENS:** Yes.

7 And, Your Honor, in response to counsel's comments on your
8 last point, I do want to make clear, I don't want the victim in
9 this scenario to be punished for being reasonable in that it
10 was willing to agree to the United -- we started with the
11 United States. Our preference is that the trade secrets get
12 reviewed in Mr. Hemann's office here in San Francisco and
13 that's it. Right?

14 Over the course of time, we tried to make sure we were
15 being reasonable. I understand that there's a need to move the
16 case along, but we shouldn't then put Hong Kong on the table
17 because we were reasonable about Singapore, Taiwan, and Japan;
18 and I'm concerned about the way that the tenor of the argument
19 has gone that it suggests that might be the case. That is not
20 the case.

21 **THE COURT:** I mean, in choosing, by the way, I mean,
22 you could have picked Australia, Denmark. All right. In other
23 words, I assume you picked these other locations because
24 someone could argue that it would be easier to get to than
25 coming here or convenient for some reason?

1 **MR. HEMANN:** Yes. Those are viable, relatively
2 convenient locations.

3 **THE COURT:** Okay.

4 **MR. STEPHENS:** And, Your Honor, if you were going to
5 have a heat mat index on that map, Hong Kong would be off the
6 charts as far as what our concerns would be about whether or
7 not a Chinese foreign agent could have access to those trade
8 secrets.

9 **THE COURT:** Okay.

10 All right. Now, it's the Government's motion. Do you
11 have anything that you want to add to the record?

12 **MR. HEMANN:** No, Your Honor.

13 **THE COURT:** Any last comments from respondents here?

14 **MS. CALDWELL:** I think, Your Honor, the only comment I
15 would make is that there are two things. One is, in addition
16 to all the literature that has been presented to the Court
17 about why Hong Kong is a good place to do business and why
18 global companies do business there, Latham and
19 Morrison & Foerster also have an attorney-client privilege
20 obligation. I think that's something that the Court shouldn't
21 lose sight of. So we have an obligation to keep materials
22 confidential, which we, both firms, I'm sure, just as Jones
23 Day, take very seriously.

24 And the second point is, as Ms. Wong noted, these trade
25 secrets, if they were trade secrets at the time, are quite old

1 at this point given the life cycle of the technology in this;
2 and I realize these issues are not currently before you and
3 haven't been briefed or presented, but I think it's not
4 irrelevant to the Court's decision that Micron has very
5 significant ongoing current operations, including a R&D
6 facility, in China, is investing very heavily in China as per
7 their own CEO's public statements, has a very major customer in
8 Huawei, which has been deemed by the U.S. government to be a
9 national security threat.

10 I think those are relevant considerations because those
11 are -- if the Chinese can get these old trade secrets in
12 Hong Kong if they were motivated to get those, I would think
13 they would be even more motivated to get current R&D activity
14 information again. I don't know what that is from a technical
15 perspective, but I'm assuming whatever is happening in 2019 is
16 more advanced than what was happening in 2015.

17 **THE COURT:** I guess the response would be, again,
18 "Well, we have a calculated decision to make money in China and
19 we're willing to take that risk, but we're not willing to take
20 it when we don't get anything back for it."

21 **MR. STEPHENS:** It's a little bit different than that,
22 Your Honor, and it's addressed in the Government's reply brief,
23 and basically it's apples and oranges as it goes to the
24 technology. The technologies at issue here relate to process
25 trade secrets, which deal with converting the raw silicon

1 wafers into a functioning memory chip. A lot of what's done in
2 China is back-end assembly where it's not involving the trade
3 secrets that are at issue.

4 **THE COURT:** Any trade secrets or just not the ones we
5 have here?

6 **MR. STEPHENS:** The ones in front of the Court --

7 **THE COURT:** Right.

8 **MR. STEPHENS:** -- those deal with the process.

9 **THE COURT:** The trade secrets. I think the argument
10 is being made that you have exposed voluntarily your own trade
11 secrets. Not these. It's not like they're arguing, "You've
12 already given them every chance and they didn't do anything
13 yet." The argument is that you have exposed your own trade
14 secrets that are valuable.

15 And it's been argued by Mr. Hemann earlier when other
16 companies were pointed to, not just Micron, but the binder that
17 I hauled out here of companies doing business, that they wanted
18 to support their assertions about the companies, firms, banks,
19 essentially everybody is in China.

20 Okay.

21 **MR. HEMANN:** But all --

22 **THE COURT:** Excuse me.

23 Mr. Hemann then said, "Well, that's their choice. They
24 made that business decision and that's not what we're dealing
25 with here. It's a different scenario," and I recognize that.

1 Okay. Did you want to say anything else before I take
2 it --

3 **MR. HEMANN:** But all trade secrets are not the same,
4 and I think the distinction that Mr. Stephens is making is that
5 process trade secrets are particularly valuable because they
6 teach how the thing is -- how the widget is built. And, you
7 know, the higher the technology -- the higher the value of the
8 trade secret, the more restrictions that a company has. The
9 lower the value, how you glue two widgets together may be a
10 trade secret because it's --

11 **THE COURT:** Oh, I see what you're saying.

12 **MR. HEMANN:** -- like the kind of glue you're using is
13 a company's trade secret. But the company is going to say,
14 "Yeah, the cost of doing business in China is so much less that
15 if they steal the kind of glue that we're using, we'll live
16 with it; but we don't want them to know how we made the two
17 widgets that were going together in China."

18 Is that -- am I stating that right?

19 **MR. STEPHENS:** Yes. I agree with that.

20 **THE COURT:** That's a fair point. The idea is not just
21 they're different but they are at different levels of
22 sophistication. That, I didn't get from the papers but, okay.
23 And not, frankly, knowing why design would be any less valuable
24 than process, and I'm not sure it is, but it looked to me like
25 everything was kind of on the same level of trade secrets.

1 People are doing work there that could expose them to being
2 hacked in some way.

3 **MR. HEMANN:** And on some level that's what this whole
4 case is about, what we're arguing about right now; and
5 Ms. Caldwell and Ms. Wong totally disagree with most of what I
6 just said and they have their arguments as to why they
7 disagree. And, you know, Mr. Stephens probably thinks I didn't
8 go far enough in what I said.

9 And that's what the trial in this case ultimately will be
10 about, is the value of these trade secrets, but that's why --

11 **THE COURT:** Right.

12 **MR. HEMANN:** -- you know, that's why in this unsettled
13 circumstance we suggest falling in favor of more protection
14 rather than less.

15 **MR. STEPHENS:** And, Your Honor, just one more comment,
16 just so it's on the record.

17 **THE COURT:** This is the last comment, otherwise I have
18 to keep giving other people equal time and you-all keep
19 thinking of new things to say or emphasize. I don't want to
20 cut you off. I know it's important to you.

21 **MR. STEPHENS:** Yes. And I'm not interjecting a new
22 point. I'm just -- simply, so the Court knows, Micron
23 disagrees with Defense counsel's position that these trade
24 secrets are older and stale. It's the way that Mr. Hemann
25 described it. They build on each other from generation of

1 product to generation of product.

2 **THE COURT:** Okay. Fair enough.

3 Now, I don't think the age of the secrets is a point that
4 would be determinative here; in other words, I'm perfectly
5 happy to accept that somebody would find them valuable.

6 Whether they're the most current technology, whether there's
7 something that you need to then develop the new technology,
8 whatever, somebody thought at least earlier they were worth
9 taking, according to the allegation.

10 So, no, I would find that what we're dealing with is
11 something that could have value, yes, to another country and
12 the question, then, is what we're going to do.

13 So I'm deeming the matter submitted, and I'm going to
14 rule. You want to get going here in one fashion or another
15 with the case.

16 Okay. I can't -- you know, I don't find, frankly, and I
17 can be happy with this part, but I really can't find that
18 Hong Kong is in the same category as Mainland China. And I
19 understand why you're particularly concerned about Mainland
20 China, and they certainly do have a reputation for being
21 interested in trade secrets around the world; but Hong Kong is
22 in a little different situation, historically they were and
23 even currently, and I don't know that there's been enough of a
24 showing that they've been essentially absorbed in some way by
25 Mainland China.

1 I don't think the unrest that's going on there now really
2 bears on this particular issue, and the complaints that are
3 being made there by students is different than what we're
4 really dealing with here.

5 We have two very reputable law firms here -- I mean, all
6 the firms are -- Jones Day, Latham & Watkins,
7 Morrison & Foerster -- that have some credibility at least in
8 the sense historically of standing by their word and also the
9 lawyers who are involved in the case directly. So I think that
10 goes a ways too.

11 The protective order as proposed to this point or agreed
12 upon, we'll say, to this point by three of the players here is
13 pretty restrictive. In other words, there are various
14 safeguards that have been put into place and that really all
15 the people that would have their hands on the material are, to
16 a certain extent, a narrow group and they are professionals who
17 have a certain obligation to the Court.

18 I understand the question about the experts, and I think
19 that what Mr. Stephens is saying about not allowing them to
20 make extra copies is a reasonable request. If for some reason
21 that would become particularly problematic in whatever is going
22 on, somebody could call it to my attention; but at the moment I
23 think that request, which I hadn't understood originally to be
24 as focused as it was, is reasonable.

25 And I also understand his desire not to just have a

1 constant flow of people to be looked into and try to figure out
2 if it's okay for them to look at things wherever they're
3 looking at them, whether they're looking at it in Tokyo or
4 Singapore or whatever.

5 So I would direct -- at the moment all we know is
6 Ms. Wong's client, but both attorneys are advised that if at
7 this time they know of what fall into the category of "other
8 Defense counsel" who they wish to have access to the material,
9 that they provide that information.

10 Do you want to give it to the Government and have the
11 Government give it to Mr. Stephens?

12 **MS. WONG:** Yes, Your Honor.

13 **THE COURT:** Is that probably the best, maybe, way to
14 do it so there's just one pipeline in effect?

15 Then I would direct that you provide that no later than --
16 oh, we'll just say November 1. That gives you an easy date to
17 remember.

18 **MS. WONG:** Thank you, Your Honor.

19 **THE COURT:** Okay. And I am going to allow Hong Kong
20 to be put on the list. I recognize what Mr. Stephens has said
21 about not wanting to be perceived as automatically thinking all
22 these other places are terrific, and certainly he would like to
23 keep things as close as possible to home.

24 In the same light, given where the events occurred, where
25 the people are located, and where at this point a large chunk

1 of the lawyers are working, I'm going to find that in the
2 absence of a stronger showing of risk here, that the concerns
3 the defendants have made weigh in favor of allowing Hong Kong.

4 It is a relatively close question, and I had not made up
5 my mind before coming out here. I wanted to explore some of
6 the questions I had; and some of them didn't particularly help
7 the defendants, others didn't particularly help the Government.
8 It's just a call the Court has to make.

9 Certainly if there are changes in whatever the dynamic is
10 that's underlying this protective order, the Court would want
11 that called to my attention. The concern of, of course, the
12 Government and Micron is they won't know about it; but if they
13 do, then they should bring it to my attention.

14 So I will ask -- I had an offer from Ms. Wong to produce a
15 protective order that adds Hong Kong to the list of approved
16 locales; and also, however, to make clear, as to the experts,
17 that they are not to make their own copies.

18 And where would that fit in the order? Does anybody just
19 quickly have a suggestion as to that? I can look too.

20 **MS. WONG:** I think there is a section that discusses
21 how the experts shall maintain the materials. So it's in --
22 let's see... It's paragraph 6(c), "Disclosure of Confidential
23 Material to Experts."

24 **THE COURT:** All right. What I recommend is you come
25 up with a proposal that you think works as to language to be

1 added, that you run it by the other side, let them see if they
2 have any concern about it reflecting or not reflecting what
3 I've tried to order here today; and then hopefully resolve that
4 and plug it in to the proposed order, and then I'll look for it
5 there unless somebody lets me know it's somewhere else.

6 As far as the names that you currently have of the other
7 Defense counsel, that won't go in the order. It will just
8 be -- in other words, we're not naming names right now. That
9 will just be a separate order that I'm making now so that
10 Mr. Stephens and Mr. Hemann will have a better idea of what's
11 coming down the pike and can be ready to either approve or not
12 approve those people when request is formally made.

13 Okay. Anything else that anyone wants to bring up in
14 connection with what we're doing here today?

15 **MS. CALDWELL:** No, Your Honor.

16 **THE COURT:** Ms. Geiger?

17 **THE CLERK:** Do you want to give them a future date?

18 **THE COURT:** She says we don't have another date on the
19 case.

20 **MS. CALDWELL:** Yes.

21 **MR. HEMANN:** Here's my suggestion as to that: Once
22 the protective order is signed and entered, we have some
23 discovery to produce. We'll get that produced; and then once
24 that's done, it would probably be a good idea to come back and
25 set for scheduling, a scheduling proceeding.

1 **THE COURT:** Well, do you want to just pick a date down
2 the road that just ballparks where you think that might fall?
3 And then if we're too optimistic about it, you can give me a
4 stipulation and just push it back.

5 We do have concerns. While this motion is pending, we're
6 not running any time off the speedy trial clock, but that would
7 have to be in somewhere someplace. I don't know.

8 **MR. HEMANN:** So we'd suggest -- which date did you
9 think?

10 **MS. CALDWELL:** Either December 18th or December 4th,
11 whichever is better for the Court.

12 **THE COURT:** Okay. Let me just take a look again.

13 **THE CLERK:** The 18th.

14 **THE COURT:** The 18th?

15 **THE CLERK:** Yes.

16 **THE COURT:** Then let's go with that.

17 **MR. HEMANN:** Yes. And then we'd ask to exclude time
18 between now and then under the speedy trial clock.

19 **THE COURT:** All right. I assume there's no opposition
20 to that.

21 **MS. CALDWELL:** No.

22 **MS. WONG:** No opposition.

23 **THE COURT:** Okay. So the matter will be continued to
24 December 18 at 2:15. I'll exclude time from the running of the
25 speedy trial clock for effective preparation all the way

1 around, that those interests are in the defendants' best
2 interests and outweigh any other interest either defendant
3 would have or the public in moving the case without this
4 exclusion.

5 Okay. Any idea when you might be able to get the order to
6 me, just a proposed order?

7 **MS. WONG:** Today is Thursday?

8 **MR. HEMANN:** Wednesday.

9 **MS. WONG:** Today is Wednesday.

10 **THE COURT:** Maybe within a week? Is a week enough
11 time for you?

12 **MS. WONG:** Plenty of time, Your Honor.

13 **THE COURT:** All right. So why don't we just say that
14 defendant Jinhau is to provide the Court with a proposed order.
15 If you run into a snag, let us know. I'm not trying to rush
16 you along. I just don't want to forget about it, frankly.

17 I'll tell you what. We'll pick that same date,
18 November 1, then you only have one date that you have to
19 remember.

20 **MS. WONG:** Thank you, Your Honor.

21 **THE COURT:** Okay. I don't know -- thank you for all
22 the work everybody did on the case and, you know --

23 **MR. HEMANN:** Thank you for your -- this is -- thank
24 you for thinking about it so much.

25 **THE COURT:** Well, I did think about it.

MR. HEMANN: It's two legal pads' worth of thinking,
Your Honor, so that's --

THE COURT: I didn't have the heat-seeking map or anything but I had my own map.

Anyway, okay. Yeah, just be sure you protect those secrets.

MS. WONG: Yes, Your Honor.

MR. HEMANN: Thank you, Your Honor.

MR. STEPHENS: Thank you, Your Honor.

MS. CALDWELL: Thank you.

THE COURT: We'll be in recess. Thank you.

(Proceedings adjourned at 3:51 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, October 28, 2019

John Berger

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter